



International Tribunal for the Prosecution of
Persons Responsible for Serious Violations of
International Humanitarian Law Committed
in the Territory of the Former Yugoslavia
since 1991

Case No.: IT-03-67-T
Date: 4 January 2010
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, Presiding
Judge Frederik Harhoff
Judge Flavia Lattanzi

Registrar: Mr John Hocking

Decision of: 4 January 2010

THE PROSECUTOR

v.

VOJISLAV ŠEŠELJ

PUBLIC DOCUMENT

**DECISION ON RADOVAN KARADŽIĆ MOTION FOR VARIANCE OF
PROTECTIVE MEASURES FOR WITNESSES KDZ386 AND KDZ554**

The Office of the Prosecutor

Mr Mathias Marcussen

Mr Alan Tieger
Ms Hildegard Uertz-Retzlaff

The Accused

Mr Vojislav Šešelj

Appellant

Radovan Karadžić, *pro se*

I. INTRODUCTION

1. Trial Chamber III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991 (“Tribunal”) is seized of a motion from Radovan Karadžić (“Appellant”) for variance of protective measures for Witnesses KDZ386 and KD554, filed publicly on 24 August 2009 with a confidential and *ex parte* annex (“Motion” and “Annex” respectively).¹ The Office of the Prosecutor (“Prosecution”) filed a written response on 3 September 2009 (“Response”).²

II. PRELIMINARY OBSERVATIONS

2. The Chamber notes that the Motion is addressed to the Chamber³ but that in the body of the Motion, the requests are addressed to the Appeals Chamber.⁴

3. The Chamber recalls that the protective measures for Witnesses KDZ386 and KDZ554 were granted by the Chamber.⁵

4. The Chamber considers consequently that it has the authority to examine the Motion and that it is indeed the proper recipient thereof.

III. ARGUMENTS OF THE PARTIES

A. The Motion

5. The Appellant requests that the protective measures granted by the Chamber to Witnesses KDZ386 and KDZ554 in the case of *The Prosecutor v. Vojislav Šešelj* (“Šešelj Case”) be varied by the Trial Chamber presiding over the case of *The Prosecutor v. Radovan Karadžić* (“Karadžić Chamber” and “Karadžić Case”

¹ “Motion by Radovan Karadžić for Variance of Protective Measures”, filed publicly on 24 August 2009 with confidential and *ex parte* annex (“Motion” and “Annex” respectively). The Chamber notes that the Annex specifies the names and pseudonyms of Witnesses KDZ386 and KDZ554 in the present case.

² “Prosecution’s Response to Motion by Radovan Karadžić for Variance of Protective Measures”, 3 September 2009 (“Motion”).

³ See cover sheet of the Motion.

⁴ Motion, paras 1 and 9.

⁵ For Witness KDZ386, see oral decision of 1 October 2008 (Hearing of 1 October 2008, T(F). 10116-10118, private session). For Witness KDZ554, see decision on protective measures, 30 August 2007, confidential.

respectively) whenever the latter, in exercising its discretionary power, deems that the circumstances so require.⁶

6. The Appellant argues that the Karadžić Chamber would be best suited to rule on the issue of upholding the protective measures for the witnesses who will appear in the Karadžić Case.⁷

7. The Appellant further argues that the fact that 162 Prosecution witnesses in the Karadžić Case are benefiting from protective measures granted in the previous cases in which they testified is incompatible with his right to a public trial.⁸

B. The Response

8. The Prosecution argues that the Motion must be denied as it is attempting to circumvent Rule 75 (G) of the Rules by deferring the authority to rescind, vary or augment the protective measures for Witnesses KDZ386 and KDZ554 to the Karadžić Chamber.⁹

9. The Prosecution also argues that granting the Motion risks having protective measures ordered by one Trial Chamber nullified by another Trial Chamber, without the Chamber seized of the first case ever being consulted.¹⁰

10. The Prosecution adds that the Motion has no legal foundation.¹¹

11. The Prosecution points out finally that the Motion undermines the purpose of Rules 75 (F) to (K) of the Rules, which ensure uniformity in the manner in which protective measures are granted.¹²

⁶ Motion, paras 1 and 9.

⁷ Motion, paras 5-8.

⁸ Motion, para. 4.

⁹ Response, paras 1 and 7.

¹⁰ Response, paras 2, 9, 10-11.

¹¹ Response, paras 12-17.

¹² Response, para. 18.

IV. DISCUSSION

12. The Chamber recalls that pursuant to Rule 75 (F) (i) of the Rules, once protective measures have been ordered in any case brought before the Tribunal, they shall continue to have effect *mutatis mutandis* in all other cases brought before the Tribunal, until they are rescinded, varied or augmented.

13. The Chamber notes that pursuant to Rule 75 (G) (i) of the Rules, a party to the second proceedings seeking to rescind, vary or augment the protective measures ordered in the first case must file its motion to any Chamber, however constituted, remaining seized of the first proceedings.

14. Therefore, by virtue of Rule 75 (G) of the Rules, it is not possible for the Chamber to transfer to the Karadžić Chamber its power to vary the protective measures that it had itself ordered for Witnesses KDZ386 and KDZ554.

15. The Appeals Chamber, which already had an opportunity to examine a similar motion from the Appellant in the case of *The Prosecutor v. Dragomir Milošević*, further pointed out that such a motion seeks *de facto* to circumvent the clearly defined procedure of Rule 75 (G) of the Rules, and that due to this fact it must be denied.¹³

16. The Chamber consequently deems that the Motion seeking *de facto* to circumvent Rule 75 (G) of the Rules must be denied.

V. DISPOSITION

17. For the foregoing reasons, pursuant to Articles 20, 21 and 22 of the Statute and Rule 75 of the Rules, the Chamber **DENIES** the Motion, without prejudice to the Appellant to request variance of the protective measures for Witnesses KDZ386 and KDZ554 from the Chamber, whilst respecting the procedure provided for in the Rules.

¹³ *The Prosecutor v. Dragomir Milošević*, "Decision on Radovan Karadžić's Motion for Variance of Protective Measures", public document, 8 October 2009, para. 8.

Done in English and in French, the French version being authoritative.

/signed/
Jean-Claude Antonetti
Presiding Judge

Done this fourth day of January 2010
At The Hague
The Netherlands

[Seal of the Tribunal]